

## **REMARKS**

This application has been carefully reviewed in view of the Final Office Action dated March 23, 2009. All rejections are respectfully traversed and reconsideration is respectfully requested.

Claims 1-22 are pending in the present application. No claims are added or cancelled. Accordingly, claims 1-22 remain pending.

In this Amendment, Applicant has amended claims 1, 8, 12, and 19 for antecedent basis. No new matter has been added. Applicant is not conceding that the subject matter encompassed by claims 1, 8, 12, and 19 prior to this Amendment is not patentable over the art cited by the Examiner. Claims 1, 8, 12, and 19 were amended solely to facilitate expeditious prosecution of the present application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by claims 1, 8, 12, and 19 as presented prior to this Amendment and additional claims in one or more continuing applications.

## **Specification and Claims**

Applicant has made certain amendments to the specification to correct typographical errors. No new matter has been added.

## **Regarding the Rejection Under 35 U.S.C. § 112**

Claims 1-22 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant respectfully traverses.

Applicant notes that there was a typographical error in the previous response regarding support for the previously-made amendments and apologizes for any confusion or inconvenience this may have caused. Support for the previously-made amendment of the “module device co-located with a retail host television receiver device . . . .” is found within the Specification as originally filed at least at page 3, lines 23-27. Page 3, lines 23-27, as originally filed, describe that:

The OpenCable™ specification defines a Point of Deployment Module (POD or CableCARD) used in conjunction with a host television Set-Top Box or other

television receiver as depicted in FIGURE 1. As shown, the CableCARD 10 is interfaced with the host device 14 (e.g., a television or television STB) at a CableCARD (or POD) interface. (emphasis added).

Figure 2 of the application, as originally filed, shows a modified version of disclosure of Figure 1 to introduce the claimed subject matter. As such, the Specification as originally filed provides detailed description of the CableCARD 10 being interfaced with a host device 14 (e.g., a television or television STB).

The Patent Office is respectfully reminded that the Federal Circuit has long held that the written description need not provide *ipsis verbis* support of claim terms. As stated in *In re Alton*, 76 F.3d 1168, 1175, 37 USPQ.2d 1578, 1584 (Fed. Cir. 1996):

If . . . the specification contains a description of the claimed invention, albeit not in *ipsis verbis* (in the identical words), then the examiner or Board, in order to meet the burden of proof, must provide reasons why one of ordinary skill in the art would not consider the description sufficient. *Id.* at 1175. If a person of ordinary skill in the art would have understood the inventor to have been in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate written description requirement is met. *Id.*

Thus, for any rejection to stand under 35 U.S.C. 112, first paragraph, the Patent Office must, in order to meet the burden of proof, provide reasons why one of ordinary skill in the art would not consider the description sufficient. Further, a claim term does not have to be included *ipsis verbis* in the Specification in order to meet the written description requirement.

Applicant respectfully submits that a person of ordinary skill in the art would understand from Applicant's Specification that the point of deployment module device is co-located with a retail host television receiver device based at least upon this disclosure. As such, the person of ordinary skill in the art would understand from Applicant's Specification that Applicant had possession of the claimed subject matter.

If the Patent Office prefers different language, such as "interfaced with," or "interfaced with via a point of deployment interface," rather than "co-located with," as previously amended, Applicant would consider such amendments to expedite prosecution of the present application.

However, Applicant believes that the Specification as originally filed fully supports the previous amendment, as discussed above.

Applicant respectfully requests that the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn. The Patent Office is further respectfully requested to provide reasons why one of ordinary skill in the art would not consider the description sufficient to meet its burden of proof if it chooses to maintain the present rejection. Applicant again apologizes for any confusion or inconvenience that the typographical error in the previous response regarding support for the previously-made amendments may have caused.

### **Regarding the Rejection Under 35 U.S.C. § 102**

Claims 1-22 were rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0126608 to Safadi et al. (hereinafter "Safadi"). This rejection is respectfully traversed.

For the Patent Office to establish anticipation, the Patent Office must show where each and every element of the claims is shown in a single reference. Further, the elements must be arranged as required by the claims. MPEP § 2131. The requirement that each and every element be disclosed in the manner claimed is a rigorous standard that the Patent Office has not met in this case.

Within the context of these rigid requirements for a valid rejection under 35 U.S.C. § 102(e), Applicant believes that the Patent Office may be either misinterpreting Applicant's claimed subject matter or misinterpreting the actual disclosure of the cited references. Applicant provides the following discussion to help clarify the claimed subject matter and the actual disclosure of the cited Safadi reference for the Patent Office, and to help clarify the fact that Applicant's claims are not anticipated under these rigid requirements.

Regarding the rejection of independent claims 1, 8, 12, and 19, each of these claims recites, for the respective method or device, among other things, a "point of deployment module." As discussed above, the claimed point of deployment module may include a POD or CableCARD used in conjunction with a host television Set-Top Box or other television receiver. (See Specification, page 3, lines 23-27).

The Patent Office alleges that the Safadi reference discloses Applicant's claimed point of deployment module device by citing a consumer device 200 in paragraph 0013 of the Safadi reference. (See Final Office Action dated March 23, 2009, page 4). However, Applicant has reviewed the cited portion of the Safadi reference in detail and finds that the allegations of the Patent Office constitute material errors of fact regarding the cited consumer device 200.

Upon review of the cited portion of the Safadi reference, Applicant finds that the Safadi reference actually discloses that the consumer device 200 of the Safadi reference may include one of a plurality of listed display devices suitable for receiving content from a headend processing system 100. The Safadi reference specifically limits the consumer device 200 to a display device when it discloses that the consumer device 200 may comprise "any other display device which may be integrated into an existing video delivery system." (See Safadi, para. 0013, as cited by the Patent Office, emphasis added).

Applicant finds no disclosure that the consumer device 200 includes Applicant's claimed point of deployment module device, either as a POD or CableCARD, and as further refined by Applicant's independent claims as receiving a stream of video data from a host television receiver device. As a matter of fact, there is no actual disclosure of Applicant's claimed point of deployment module device within the cited portion of the Safadi reference. As such, the allegation that the consumer device 200 of the Safadi reference anticipates Applicant's claimed point of deployment module device constitutes a material error of fact.

It is additionally noted that the disclosed consumer device 200 is disclosed as being "one" of the listed display devices, not two or more of any of the listed display devices. As such, there is no disclosure of the consumer device 200 performing certain claimed operations for the point of deployment module device as discussed in more detail below. Specifically, the Safadi reference discloses that the streaming media content is processed by the processor 110 at the headend 100 for delivery over the existing delivery network 60 to the consumer device 200 for decoding and display. (See Safadi, para. 0012). As such, the Safadi reference discloses that the consumer device 200 performs decoding and display activities.

Applicant's independent claims further recite in each of the respective phrases that the claimed point of deployment module device receives, "a stream of video data from the host

television receiver device, the stream of video data being previously received by said host television receiver device from a multimedia broadcaster . . . .” In stark contrast to Applicant’s claimed subject matter, the disclosed consumer device 200 of the Safadi reference receives the transcoded media content from the headend processing system 100. (See Safadi, para. 0032, as cited by the Patent Office). At least because the disclosed consumer device 200 receives the transcoded media content from the headend processing system 100, and not from another of the listed display devices, the consumer device 200 cannot be the claimed point of deployment module device.

Applicant’s claimed point of deployment module is further claimed, with reference for convenience to claim 1, as “transcoding the stream of video data received from the host television receiver device to convert the stream of video data to a second coding and sending the transcoded data stream back to the host television receiver device.” The Patent Office admits in its Response to Arguments section that the disclosed transcoder 130 of the Safadi reference is located at the headend processing system 100. (See Final Office Action dated March 23, 2009, pages 2-3). As such, the Patent Office admits that the transcoding disclosed within the Safadi reference is performed at the headend processing system 100 and not within the consumer device 200. Applicant finds no disclosure within the Safadi reference to contradict these admissions of fact by the Patent Office. As such, the consumer device 200 cannot be the claimed point of deployment module device for at least these additional reasons. Further, the allegations by the Patent Office that the disclosed consumer device 200 anticipates Applicant’s claimed point of deployment module device further contradicts its very own admissions regarding the disclosure of the Safadi reference.

In addition to the distinctions discussed above with respect to the cited consumer device 200, it is also noted that the headend processing system 100 disclosed within the cited Safadi reference is not Applicant’s claimed host television receiver device, nor is it the disclosed consumer device 200. In fact, the disclosed headend processing system 100 sends the transcoded media content to the consumer device 200, not back to any device from which it is received. These additional distinctions alone should suffice to show many additional errors of fact

regarding the actual disclosure of the Safadi reference relative to the allegations of the Patent Office without detailed discussion herein at this time.

Accordingly, the Safadi reference does not teach or suggest a point of deployment module as claimed by Applicant. The Safadi reference further does not teach or suggest Applicant's claimed point of deployment device that receives a stream of video data from a host television receiver device, the stream of video data being previously received by the host television receiver device from a multimedia broadcaster. The Safadi reference further does not teach or suggest Applicant's claimed point of deployment device that transcodes the stream of video data received from the host television receiver device to convert the stream of video data to a second coding and sends the transcoded data stream back to the host television receiver device.

Applicant respectfully submits that at least these elements of Applicant's independent claims are not taught or suggested by the Safadi reference. As such, the allegations of the Patent Office regarding the factual disclosure of the Safadi reference are believed to be in error. Applicant trusts in the Patent Office to properly consider the present discussion and respectfully requests reconsideration and withdrawal of the present rejection.

Based upon the numerous elements that are missing from the Safadi reference, the Patent Office has not shown where each and every element of the independent claims are taught or suggested within the Safadi reference. Accordingly, the Safadi reference does not anticipate independent claims 1, 8, 12, and 19 for at least these reasons and the rejection of claims 1, 8, 12, and 19 should be withdrawn. Additionally, the Final Office Action alleges multiple factual errors regarding the disclosure of the cited reference as cited. Applicant respectfully submits that the Patent Office's legal conclusion of anticipation also in error as at least being based upon erroneous factual allegations.

Claims 2-7 depend, either directly or indirectly, from claim 1. Claims 9-11 depend from claim 8. Claim 13-18 depend, either directly or indirectly, from claim 12. Claims 20-22 depend from claim 19. Accordingly, the rejection of claims 2-7, 9-11, 13-18, and 20-22 should be withdrawn for at least the same reasons as the independent claims from which they depend.

Applicant respectfully submits that claims 1-22 are in condition for allowance and notice of the same is requested at the earliest possible date. Applicant reserves the right to provide

additional arguments against the rejection of these claims in the future if needed. In view of the above, reconsideration and allowance are respectfully requested. If any issues remain, the Examiner is encouraged to contact the undersigned to expedite allowance and issue and avoid the necessity and expense of appeal.

### **Concluding Remarks**

The undersigned additionally notes that many distinctions exist between the cited art and the claims. However, in view of the deficiencies discussed above, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Final Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

### **Interview Request**

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned respectfully requests the courtesy of an interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,

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